

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

DISCOUNT VIDEO CENTER, INC.,

Plaintiff,

v.

DOES 1-29, et al.

Defendants.

Civil Action No. 12-cv-10805-NMG

**FIRST AMENDMENT LAWYERS ASSOCIATION'S  
MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF**

The First Amendment Lawyers Association (“FALA,” or the “*Amicus*”) hereby moves for leave to file the accompanying *amicus curiae* brief in the above-captioned matter. *Amicus* seeks leave to file a brief to address the legal issue raised by the Court in its Order of August 10, 2012 concerning the question of pornography’s entitlement to copyright protection. ECF 31 at pg. 5, FN 4. *Amicus* supports neither party on any other issue or claim in the litigation.<sup>1</sup>

*Amicus* is a national non-profit organization formed in the late 1960s that today boasts more than 180 members, all of whom are attorneys who are dedicated to the protection of free expression.<sup>2</sup> *Amicus*’ central mission is to protect and defend the First Amendment. *Amicus* has no fiscal or direct interest in this litigation, but is concerned about one element’s outcome by virtue of its organizational mission.

*Amicus*’ membership has been involved many in landmark cases defending erotic expression and adult entertainment, and have been on the front lines of defending free expression since the organization’s founding. Most recently, *Amicus*’ members have participated in prominent, vigorous defenses of free speech including *U.S. v. Extreme Associates, Inc.*, 431 F.3d 150 (3d Cir. 2005) (questioning whether a federal statute criminalizing the commercial

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<sup>1</sup> *Amicus*’ counsel have made good faith efforts to meet and confer with all parties prior to filing this motion by conferring with Plaintiff’s counsel, who consents to the motion. Does 2-29 have been dismissed and Doe 1 has not been identified, therefore no meet and confer was possible.

<sup>2</sup> The organization occasionally admits non-lawyer members on a case-by-case basis.

distribution of obscene materials should be struck down); *U.S. v. Stagliano*, 693 F.Supp.2d 25 (D.D.C. 2010) (challenging the constitutionality of federal statutes that criminalize the interstate trafficking of obscenity); *U.S. v. Little*, 2008 WL 2959751 (M.D. Fla. 2008) (determining whether the traditional community standards of the *Miller* test should be applied to Internet speech); *Alameda Books v. City of Los Angeles*, 222 F.3d 719 (9th Cir. 2000) (determining whether City of Los Angeles ordinances were adequately supported by evidence of adverse secondary effects); and *U.S. v. Investment Enterprises, Inc.*, 10 F.3d 263 (5th Cir. 1993) (involving the shipment of obscene materials in interstate commerce).

Trial courts regularly consider *amicus* briefs. Amicus briefs often illuminate contentious and complex legal issues in intellectual property cases. See *Righthaven LLC v. Wolf et al.*, Case No. 1:11-cv-00830 (Doc. # 26) (D. Colo. Sept. 6, 2011) (granting leave for *amici* Electronic Frontier Foundation and Citizens Against Litigation Abuse, Incorporated to file their respective amicus briefs). District courts' acceptance of *amicus* briefs is well-established not just in this District, but nationally as well. *On the Cheap LLC v. Does 1-5011*, Case No. C10-4472 BZ (N.D. Cal. Sept. 6, 2011) (accepting *amicus* brief from Electronic Frontier Foundation); *Elektra Enter. Group. v. Barker*, 551 F. Supp. 2d 234, 237 (S.D.N.Y. 2008); *Liberty Media Holdings, LLC v. Tabora et al*, Case No. 12-cv-02234 (S.D.N.Y. June 25, 2012). As this submission is legally permissible, *Amicus* submits that the accompanying brief will be useful to this Court in ruling in considering the legal merits of Defendant's Counterclaim.

For the foregoing reasons, the First Amendment Lawyers Association requests that the Court grant the motion for leave to file the accompanying *amicus curiae* brief.

Dated this 17th day of August, 2012.

COUNSEL FOR AMICUS CURIAE:

By: /s/ Marc J Randazza  
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CERTIFICATE OF SERVICE

Undersigned hereby certifies that a true and accurate copy of the foregoing **MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF** was sent through the District of Massachusetts' ECF system on this 17th day of August 2012, providing service to the Plaintiff Discount Video Center, Inc. As John Doe 1 has yet to be identified, he cannot be served.

/s/ Marc J. Randazza

Marc J. Randazza